

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
CENTRAL FAX CENTER

In re Application of

APR 18 2006

MATTHEW R. HYRE ET AL

: Art Unit: 1731

Serial No: 10/005,682

: Examiner: Steven Griffin

Filed: December 5, 2001

: Docket No: 5356-05

For: GLASS CONTAINER FORMING
MACHINE

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

VIA FAX NO. 571-273-8300

Sir:

ON APRIL 18, 2006

LETTER

This is in response to the Notice of Abandonment dated April 3, 2006.

SUMMARY OF RELEVANT FILE HISTORY

1. On August 8, 2005, the office issued a Notice of Non-Compliant Appeal Brief which set a one month/thirty day period for reply.

2. Applicant mailed a new Brief on November 18, 2005, which required a three month extension of time. The fee in the amount of \$1,020.00 was paid covering a required extension of three months. As of November 21, 2005, the date when the Office received this Brief, applicants had 2½ months (until February 8, 2006), to further extend the time for reply.

3. On February 15, 2006 (some 2½ months later), the Examiner issued a communication rejecting the brief and requiring the filing of a new brief. The running time for reply was not replaced with a one month/30 day period for reply. As a result, applicants could not reply to this communication. The

application stood abandoned on February 8, 2006, the date beyond which applicants could not buy extensions of time to extend the period for reply. Applicants filed the required brief assuming that their had to be such a one month/30 day extension associated with the communication dated February 15, 2006, but has received a Notice of Abandonment dated April 3, 2006. This means that the Examiner, in this communication, was requesting something that was not possible at the date of the communication. The application stood abandoned.

DUE PROCESS

The Office cannot accept the Brief for the purpose of taking \$1,020.00 for an extension fee and then reject the brief resulting in the abandonment of the application. Applicant would suggest that either the extension fee has to be refunded or the communication dated February 15, 2006 be amended to provide for a one month/30 day response period.

COURTESY

Applicants' attorney has been practicing in this art area for almost 20 years. During that time, he has extended every courtesy to any Examiner who has sought assistance in any way. Courtesy is a two way street. Here applicants' attorney was not aware that the style of the Brief had changed. Certainly, the Office knew this to be the case. When applicants' attorney filed the very first brief, the Office knew that applicants' attorney was not aware of the new rules. Why didn't the Office clearly state, when the brief was first rejected that, there was a completely new brief style? Doesn't courtesy require that when the Office knows that you are not on board, that every effort should be made to help the attorney not make the same mistake twice? All that had to be

stated was that there are completely new rules concerning the style of the brief. Here, applicants' attorney filed three briefs before he was advised by another Examiner of the nature of the change.

Applicants' attorney has read section 1205.03 (Non-Compliant Appeal Brief and Amended Brief) and it is clear that this section demonstrates that every courtesy is to be extended during a time when attorney's will not be submitting perfectly styled briefs.

Respectfully submitted,

By 
Spencer T. Smith
Attorney for Applicant
Reg. No. 25,926

April 18, 2006

Emhart Glass Research, Inc.
89 Phoenix Avenue
P.O. Box 1229
Enfield, Connecticut 06083-1229

(860) 814-4052
(860) 814-4173 (fax)

- 3 -